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Feb 4, 2003

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Thoms Martin, Esq.
Off. of Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-2402

Re: Sauget Area 2 UAO# VW-02-C-716

Dear Mr. Martin:

We submit this letter on behalf of our client, Cerro Copper Products Co. ("Cerro"), in response to a Unilateral Administrative Order ("UAO") issued by the United States Environmental Protection Agency ("USEPA") on September 30, 2002, Order # VW-02-C-716. Cerro has a history and long-standing policy of cooperating with both the Illinois Environmental Protection Agency ("IEPA") and USEPA. In this case, however, pursuant to CERCLA §§106(b)(1) and 107(c)(3), Cerro believes that sufficient cause exists for it not to comply with the above referenced UAO. First, the current data, as referenced in both the UAO and the Record of Decision ("ROD"), do not support a finding of liability as to Cerro for the work required by the UAO. Second, Solutia, Inc. ("Solutia") has already undertaken the work that the UAO requires. The USEPA has taken the position that it will permit only one company (or group of companies) to perform the UAO work. Accordingly, Cerro can only comply with the UAO by settling with Solutia. Cerro has engaged in good faith efforts to reach an agreement with Solutia, but to date, those efforts have been unsuccessful. Because there is no other manner in which Cerro can comply with the UAO, it has sufficient cause for its non-compliance.

1. The Data Do Not Support Cerro's Liability

Solutia, through its predecessor Monsanto Company ("Monsanto"), is the primary and perhaps sole source of the contaminants of concern ("COCs") in the Mississippi River sediments and the groundwater entering the River in the area comprising the groundwater operable unit ("GW-OU") that is the subject of the UAO. Data from the Focused Feasibility Study ("FFS") as well as



field screening data from the Area 2 Remedial Investigation Feasibility Study ("RI/FS") suggest that 90% to 99% of the volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs") targeted for capture by the GW-OU emanate from three sites that were owned and/or operated exclusively by Solutia. These sites consist of two waste disposal areas, Site R and Solutia's Route 3 Hazardous Waste Drum Site (Solutia was the sole contributor of wastes to both), and Solutia's William G. Krummrich ("WGK") Plant.

The remaining areas allegedly contributing to the anticipated capture zone, Sites, Q (dog leg), O and I were all used historically by Solutia. Site O, for example, consists of four closed sludge dewatering lagoons that were used between 1966 and approximately 1978 to dispose of sludge from the Village of Monsanto/Sauget Wastewater Treatment Facility (the "P-Chem Plant"). Solutia was by far the largest contributor, both in terms of volume and toxicity, to the P-Chem Plant. When the P-Chem Plant lagoons were closed, Solutia's negotiated share of the closure costs was 75%. Sites Q and I were landfills to which Solutia was a major contributor.

Furthermore, the COCs identified by USEPA in the UAO track closely with the VOCs, SVOCs, polychlorinated biphenyl's ("PCBs") and dioxins, that have been raw materials, intermediates, products or by-products at Solutia's WGK Plant at various times throughout its operating history. This stands to reason since Site R, which is immediately adjacent to the barrier wall that is the centerpiece of the UAO remedy, was used exclusively by Monsanto as a dump for chemical wastes emanating from the WGK Plant. Moreover, the WGK Plant, which is by far the largest area in the GW-OU's anticipated capture zone, is itself a significant source of contamination to the shallow and middle groundwater units upgradient of the GW-OU. We understand that the WGK Plant is currently in the midst of RCRA corrective action, and that the GW-OU will, in effect, address groundwater contamination identified in the course of the corrective action process.

Conversely, there is no data or evidence linking Cerro to the GW-OU. The COCs driving the GW-OU are SVOCs and VOCs, none of which have ever been identified to Cerro's waste streams. For these reasons, Cerro has no liability for implementing the GW-OU, and should not be required to comply with the UAO.

2. USEPA's Delegation of Settlement Authority to Solutia Compromised Cerro's Ability to Comply

The cover letter attached to the UAO indicated that the USEPA had determined that the traditional settlement procedures outlined in CERCLA §122 were unnecessary. Instead, USEPA encouraged all UAO recipients to contact Linda Tape, counsel for Solutia, to determine whether a particular recipient should settle with Solutia or participate in the response activities with Solutia.



Within days of receiving the UAO, Cerro received a letter from Solutia that was addressed to all 75 recipients of the UAO, indicating that each recipient could comply with its obligation under the UAO by agreeing to pay to Solutia an interim allocation of 2% of the proposed costs of the GW-OU (interestingly, 75 recipients multiplied by 2% equals 150%). The letter further indicated that Solutia would be hosting a meeting on October 24, 2002 to discuss the allocation and settlement options.

As previously indicated, Solutia is solely responsible for contamination emanating from Site R, the Route 3 Hazardous Waste Drum Site and the W GK Plant, which are the primary source areas for the GW-OU, and is a significant contributor to the other source areas, Sites I, O and Q. Cerro, on the other hand, contributed no waste to Site Q, nor did it contribute any COCs to Sites O or I. Nonetheless, in light of its policy of cooperating in such matters, and for purposes of settlement only, Cerro was willing to assume that its historic contributions to Site O justified its settling with Solutia by contributing to Solutia's performance under the UAO. However, because Site O is a *de minimis* contributor of VOCs and SVOCs to the anticipated capture zone, and because Cerro's share of the P-Chem Plant lagoon closure was just 4% (as opposed to Solutia's 75%), Cerro did not and does not believe that it should bear a significant portion of the cost of complying with the UAO. Cerro attended the meeting hosted by Solutia. After the meeting and a thoughtful critique of Solutia's proposed interim allocation as it related to Cerro, Solutia increased Cerro's allocation from 2% to 6%. This, obviously, was not a step in the right direction.

Subsequent to the Solutia meeting, the USEPA scheduled a meeting in Chicago, Illinois for November 4, 2002. Cerro attended this meeting as well. At this meeting Solutia confirmed that it would be performing under the UAO, and the USEPA indicated that the only way that recipients other than Solutia could comply was to settle with Solutia. Notwithstanding Cerro's objection (and continuing objection) to this unorthodox approach by USEPA, Cerro has attempted to comply by engaging in settlement negotiations, and by making three, successively increasing, good faith, monetary offers to Solutia.

These offers began on December 19, 2002, when Cerro along with thirteen other *de minimis* parties, (BFI (including Trashmen, C&E Hauling and Hilltop Hauling); Chem Waste (including Onyx), Ethyl, Rogers Cartage, Norfolk Southern, ExxonMobil, Pillsbury, Dennis, Glidden, Cargill, Dow, American Zinc, and Kerr-McGee) (the "Settlement Parties")), offered Solutia \$678,655.00 (\$42,500 from Cerro) to fund GW-OU response activities. Solutia rejected the group offer, but did offer to settle independently with Norfolk Southern, Kerr McGee and Dow, offering a full release and indemnity in exchange for a \$20,000 payment per company. Solutia offered no explanation as to why certain companies were offered a buyout, and others were told their offers were too low. For the remaining eleven (11) Settlement Parties, Solutia countered with a demand for a 30% interim allocation. Concerned that Solutia's refusal of the offer would

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put the remaining Settlement Parties into non-compliance with the UAO, we requested, and received from USEPA an additional 30 days to continue negotiations with Solutia.

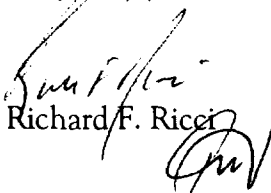
On February 5, 2003 the remaining Settlement Parties (which also included a new addition, Cyprus Amax) tendered another settlement offer to Solutia in the amount of \$755,705.00 (\$52,500 from Cerro). Solutia again rejected the offer. On February 11, 2003 Cerro and ExxonMobil made a joint offer to Solutia. As of the date of this letter, Solutia has not responded to this offer.

On two separate occasions, Cerro offered, in good faith, to pay to Solutia sums far beyond any reasonable approximation of its responsibility for the work required by the UAO. On each occasion, Cerro was rebuffed. Cerro now has a third offer pending with Solutia, to which Solutia has not responded, notwithstanding today's deadline. Because USEPA has defined compliance with the UAO as a settlement with Solutia, and Solutia has rejected or failed to respond to Cerro's offers to date, Cerro is unable to comply with the UAO.

Please be advised, however, that if the USEPA is willing to entertain an alternative compliance path, such as a direct settlement with the USEPA, Cerro would be willing to settle with the USEPA for the same amount that it has offered to Solutia. This offer is for settlement purposes only, and should not be construed as an admission of liability.

If you would like to discuss the direct settlement alternative, or if you have any input on additional compliance alternatives that we may explore, please do not hesitate to contact me. Without such alternatives though, Cerro, with sufficient cause, is unable to comply with the UAO.

Very truly yours,


Richard F. Ricci

RFR:

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cc: Mr. Gary Ewing
Mr. Joseph Grana

